

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 15 November 2011

Public Authority: Wiltshire Council
Address: County Hall
Trowbridge
Wiltshire
BA14 8JN

Summary

The complainant asked Wiltshire Council (the "public authority") to provide information relating to honorarium payments to former staff of Kennet District Council. The public authority withheld the requested information using the exemption in section 40(2) (personal information) of the Freedom of Information Act (the "Act"). The Commissioner considers that section 40(2) was incorrectly applied in this case. The complaint is upheld and the public authority is required to disclose the withheld information. The public authority's handling of the request also resulted in breaches of certain procedural requirements of the Act as identified in this Notice.

The Commissioner's role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The request relates to honoraria payments made to staff who used to work for Kennet District Council. In April 2009 Kennet, along with North Wiltshire, West Wiltshire and Salisbury District Councils, all merged with the County Council to become a unitary authority, namely Wiltshire Council.

3. A Wiltshire Council agenda item for an Audit Committee meeting on 9 December 2009¹ states:

"As part of the monitoring of the relevant decisions of the five councils in the period of transition to one Council the Monitoring Officer and the s151 Officer of Wiltshire Council referred to the Chief Executive of Wiltshire Council honorarium payments made to some former employees of Kennet District Council. In order to ensure transparency and accountability, he agreed that the Council's external auditors, KPMG, should be commissioned to carry out an independent audit of the nonpensionable honorarium payments. A copy of the executive summary of their report is circulated as a Part II document."

4. It also includes the following two "main considerations":

"The audit report concludes that the payments were made under appropriate authority but the approach followed by the Council in determining how non-pensionable honorarium payments should be made, and to whom, lacked objectivity and transparency and was insufficiently documented. The report, however, stressed that no direct evidence of deceitful or illicit behaviour was uncovered during the audit."

"Wiltshire Council is required to satisfy itself as to the validity of the payments included within the audit. Counsel's advice is therefore being sought on the legality of these payments in order to determine whether any recovery action is appropriate".

5. A redacted version of the Executive Summary of KPMG's findings (the "Report"), as circulated at the meeting above, has previously been provided under the Act. It states:

"In our capacity as external auditors to Wiltshire Council ("Wiltshire"), we agreed to carry out an independent investigation into matters pertaining to the payment of non pensionable honoraria to certain members of staff at Kennet District Council ("the Council"/"Kennet") in December 2008 and January 2009.

1

[https://cms.wiltshire.gov.uk/Data/Audit/20091209/Agenda/\\$Item%20No.%2016%20-%20Audit%20of%20Non-Pensionable%20Honoraria%20-%20Kennet%20District%20Council%20-%20.doc.pdf](https://cms.wiltshire.gov.uk/Data/Audit/20091209/Agenda/$Item%20No.%2016%20-%20Audit%20of%20Non-Pensionable%20Honoraria%20-%20Kennet%20District%20Council%20-%20.doc.pdf)

As part of our work we analysed payroll transaction data provided to us by Wiltshire, collected and analysed electronic data held by certain custodians and interviewed certain individuals who were employed by Kennet at the time that the payments were made, and who may have been involved in the decision making and implementation of these payments”.

6. An article appeared in *Private Eye* on 30 April 2010 concerning the Report which influenced the complainant's request.
7. KPMG produced the following publication in November 2009: *“Review of severance payments – Wiltshire Council”*, which is available online².
8. A letter was sent out to recipients of the honoraria. A copy of this is appended to this Notice.

The request

9. Having been provided with a redacted copy of the Report, on 13 November 2010, the complainant made the following information request:

*“I have now closely studied the information you have previously provided. Regretfully, I now feel even greater disquiet than after reading the *Private Eye* article, which prompted my first letter to [name redacted]. As well as the requirement that payment recipients sign a confidentiality clause, other findings in the KPMG report appear to indicate the very antithesis of open and democratic local government. On page 2 of their report KPMG state -*

‘The manner of the payment of non pensionable honoraria to senior members of management, [REDACTED] all of whom were personally and actively involved in the implementation of the scheme and in particular the process for selecting recipients of the award was, in our view, ill advised.’

and on page 3 -

² http://194.72.162.210/documents/dscgi/ds.py/Get/File-23875/Item_No._15_-_Review_of_Severance_Arrangements_-_the_Five_Councils_-_Appendix_1.pdf

'd. it is questionable whether senior officers [REDACTED] should have received such an award, even if the Leader of the Council had suggested it, because of (i) their involvement in the decision making process, and (ii) the fact that what they were supposed to have done to justify their payments might be argued to have been part of their job.'

Bearing in mind also the KPMG criticism regarding the lack of transparency, I ask you to let me have the names and job title of the senior members of management who received an honorarium and who also participated in the decision-making process, together with the amount received by each individual".

10. The public authority acknowledged receipt of this request but did not send a formal response until 24 December 2010. It refused to provide the information under section 40(2) of the Act (personal information), saying that to do so would breach the Data Protection Act 1998 (the "DPA").
11. On 23 January 2011 the complainant sought an internal review.
12. Having not received this the complainant wrote to the Commissioner on 28 March 2011.
13. On 12 April 2011 the public authority sent out its internal review. It maintained its previous position.

The investigation

Scope of the case

14. Following interim correspondence, on 23 May 2011 the complainant asked the Commissioner to consider the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - the public authority's interpretation of his request; and
 - the withholding of the requested information.
15. The complainant has expressed concern about the way his request was dealt with in that the public authority's responses did not cite his actual information request. Instead it referred to him asking for an unredacted copy of the Report, which is not what he specifically requested.

16. The Commissioner would like to clarify that the information requested actually falls within the content of two reports, namely the Report as cited by the complainant above, and also the full KPMG Report which is the source of the executive summary. The Commissioner is considering disclosure of the information specifically requested by the complainant, as opposed to disclosure of either Report.

Chronology

17. On 12 July 2011 the Commissioner advised the complainant that he was ready to commence his investigation. On the same day the complainant responded and clarified the extent of his complaint.
18. On 13 July 2011 the Commissioner raised queries with the public authority. A full response was sent on 25 July 2011 which included a copy of the withheld information. Further information was promptly provided when requested.

Analysis

Exemptions

Section 40(2)

19. Section 40(2) of the Act provides an exemption for information that constitutes the personal data of third parties:

"Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied."

20. Section 40(3)(a) of the Act states that:

"The first condition is-

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress)."

21. The relevant text of section 40 can be found in the legal annex attached to this Decision Notice as can the relevant parts of the DPA.
22. The Commissioner will determine whether or not the public authority correctly applied section 40(2) in order to withhold the requested information.
23. In this case the public authority has explained that the information is the personal data of those individuals concerned, and also that more than one of the parties concerned did not consent to disclosure. It has said that this information is exempt under section 40(2) of the Act by virtue of section 40(3)(a)(i) and (ii) and that disclosure would breach the first and sixth data protection principles.
24. Section 1 of the DPA defines personal data as information which relates to a living individual who can be identified:
 - a. from that data, or
 - b. from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
25. The Commissioner considers that the withheld information in this case constitutes information from which the data subject could be identifiable.
26. Such information is exempt if either of the conditions set out in sections 40(3) and 40(4) of the Act are met. The relevant condition in this case is at section 40(3)(a)(i) of the Act, in respect of principle 1, and 40(3)(a)(ii) in respect of principle 6.

DPA Principle 1

27. The public authority has argued that disclosure of the personal data would breach the first data protection principle, which states that: *"personal data shall be processed fairly and lawfully"*. Furthermore at least one of the conditions in Schedule 2 should be met.
28. The public authority has consulted the parties who are at the centre of the request. One of these has consented to disclosure of the information, the others have raised various objections. Despite this consent the public authority has not released the information about this party as it believes to do so would increase the likelihood of the other parties being identified. It also believes that this party may not have provided consent were they to have been aware of the responses of the other parties.

29. When seeking their consent the public authority drew the parties' attentions to one of the Commissioner's earlier decisions, namely FS50262907³ (the "Previous Decision"). The parties who objected to disclosure made direct reference to this and provided counter-arguments.
30. The Commissioner has viewed the various objections raised. Some of these can be summarised as follows.
- An expectation of privacy as a result of a confidentiality clause.
 - The Previous Decision being an exception rather than a rule.
 - The report being one-sided and not the product of a fair and open process.
 - Disclosure would cause damage and distress.
31. In his Previous Decision the Commissioner found that 'bonus' payments to a Chief Constable had been given as part of an obligatory statutory scheme linked to his performance and that they also included a confidentiality clause. Furthermore, he was advised that the maximum amount payable was 15% of pensionable pay and that there were mechanisms in place to ensure accountability. The Commissioner concluded that it would be unfair to disclose the exact amounts concerned but that it was not unfair to disclose the payments in a £5,000 band.
32. The Previous Decision also concerned the payment of an honorarium, which did not include a confidentiality clause. The Commissioner considered that there was a legitimate public interest in disclosure, that disclosure would not constitute an unwarranted interference into the party's private life, and that full disclosure was therefore fair. However, due to the particular circumstances of that case, he ultimately found that it was only possible to disclose the payment in a £5,000 band because it would breach another party's rights under the DPA.
33. Although the parties concerned do not agree that the Previous Decision has any relevance to their own particular circumstances the Commissioner considers that it does. His reasons for this are as follows.
- The payments concerned in this case are also honorarium payments.

3

- They are payments to “senior members of management”.
- The sums of money concerned – although not large – are not insignificant.
- The party in the Previous Decision also withheld consent.

However, he does note that there are some differences which he will expand on below.

34. The honorarium payments in this current case do not fall neatly into either of the types of payments considered by the Commissioner in his Previous Decision. However, their nature is largely along the lines of the honorarium payments previously considered, although they do have one similar quality to the bonus payment in that they included a confidentiality clause. As such, it may be argued that the existence of such a clause means that the parties concerned would not have reasonably expected the details to be placed in the public domain.
35. However, the Commissioner considers that the clause in this case is of a different nature, in that it concerns ‘one off’ payments to senior management who were actually involved in the implementation of the honoraria scheme and in the decisions as to who was to receive them. As an external auditor, KPMG commented on a *“lack of transparency”*, as the decisions were not ratified by full Council, and added that the inclusion of a confidentiality clause *“... added an air of secrecy and impropriety to the whole affair”*. As can be viewed in the actual letter sent to recipients (see non confidential annex), they were asked to *“keep this payment confidential”* as it had not been possible to make awards to all staff. Furthermore they were asked to sign an agreement confirming that they will: *“respect the requirement to keep the receipt and amount of this honorarium confidential as a condition of its payment”*.
36. The Commissioner notes that there is no reference to the Act in the letter, no time span to suggest when the agreement might expire and no suggestion of what might happen were the recipient not to uphold the agreement. Furthermore, it is clear from the letter that the intention of the clause was to ‘hide’ the payment from other work colleagues who may not have been fortunate enough to have been given such an award. Obviously the payment of the awards has now been placed in the public domain so those who have not received a payment will now be aware that such payments were made. Additionally, the request does not ask for details of all payments, only those made to ‘senior members of management’ – who are now known to have received such payments as this is stated in the Report.
37. The legitimate public interest in disclosure of the requested information in this case is of particular significance. Based on the findings of KPMG,

in their capacity as independent external auditors for the public authority, the payments have been viewed as “questionable”. This is because those concerned, i.e. the parties who are the subject of this request, were actually involved in the decision-making process to award the honoraria and that:

“... what they were supposed to have done to justify their payments might be argued to have been part of their job”.

38. It is also of relevance that the requested disclosure includes that of the honorarium payments, not the individuals’ actual salaries, and there does not appear to be any direct link between the two figures, i.e. the revealing of the honorarium would not allow for deduction of the actual salary.

39. The Commissioner would like to refer to his guidance which states:

“Only in exceptional circumstances will disclosure of an exact salary be appropriate. Where there are additional public interest factors, this may mean that disclosure of the precise salary is necessary and may outweigh any detriment to the individual concerned. This could arise where:

- there are current controversies or credible allegations;*
- there is a lack of safeguards against corruption;*
- normal procedures have not been followed;*
- the individual in question is paid significantly more than the usual salary for their post; or,*
- the individual or individuals concerned have significant control over setting their own or others’ salaries”.*

40. Whilst the information in question here is not a ‘salary’, it is obviously a payment and the Commissioner believes that the points from his guidance above are all still relevant.

41. One of the parties concerned has raised objections about criticism in the Report, saying that it is one-sided, ‘personal’ and that it has not been part of a fair and open process. However, the Commissioner here notes that the company selected by the public authority to undertake the investigation is a highly respected organisation which is one of the largest accounting firms in the UK. As such, the Commissioner does not agree that KPMG’s findings can be viewed in the manner suggested. On reading the disclosed parts of the Report it is obvious that there have been some controversies surrounding the payments, bearing in mind that KPMG were asked to undertake an investigation by the public authority precisely because there were such concerns. It is of further note that within the Report KPMG specifically comment:

"... we would stress that during our audit we have uncovered no direct evidence of deceitful or illicit behaviour".

42. In line with his findings in his earlier decision, and taking into account the additional factors above, the Commissioner considers that disclosure of the exact honoraria payments, along with the names and job titles of the staff concerned, would be fair. He concludes that schedule 2, condition 6(1) of the DPA allows processing of the data in question.

Is there a schedule 2 condition that allows processing?

43. The first principle of the DPA provides that personal data must not be processed unless at least one of the conditions in Schedule 2 of the DPA is met.
44. Therefore, the Commissioner is required to consider whether any of the Schedule 2 conditions apply in this case.
45. The most relevant condition is condition 6(1), which provides that -

"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject".

46. The Tribunal, in the case of House of Commons v ICO and Leapman, Brooke, Thomas (EA/2007/0060) set out that the following test should be applied:
- there must be a legitimate interest in the disclosure of the information;
 - the disclosure must be necessary to meet this legitimate interest, ie there must be no way that the legitimate interest could be met other than by disclosure of the information; and
 - the disclosure must not constitute an unwarranted interference into the individual's private life.
47. The Commissioner finds that disclosure of the information would comply with schedule 2 condition 6. He has concluded that there is a legitimate public interest in disclosure and that disclosure would not constitute an unwarranted interference into the individuals' private lives. Disclosure of the payments is a proportionate way to meet the legitimate public interest.

48. In his analysis as to whether disclosure of the information would be fair, the Commissioner has considered whether the public has a legitimate interest in the information being disclosed and whether disclosure would constitute an unwarranted interference into the individuals' private lives. He has concluded that there is a legitimate public interest in disclosure and that disclosure would not constitute an unwarranted interference.
49. The Commissioner therefore considers that schedule 2, condition 6(1) of the DPA allows processing of the data in question.

Would disclosure of the information be lawful?

50. The Commissioner has considered whether disclosure of the requested information would be lawful. He has considered whether disclosure would be considered a breach of the duty of confidence, imposed by the confidentiality agreement. The Commissioner is satisfied that there would be a public interest defence against a breach in confidence, balancing article 8 and article 10 Human Rights. Therefore, he is satisfied that the disclosures may be lawfully made.

DPA Principle 6

51. The public authority has also cited principle 6 of the DPA to engage this exemption. It explained to the complainant that:

"A section 10 Notice has been served on the council. This seeks to prevent any further processing of the information which is the subject of your request on the basis that the processing will cause substantial damage or distress to the data subject or another, and that the damage or distress is unwarranted".

52. Section 40(3)(a)(ii) of the Act covers the situation where a data subject has exercised the right to object to the processing on the grounds that substantial damage or substantial distress is being caused to him by virtue of the processing - which can include disclosure. If this right has been exercised, and a notice given by a data subject under section 10 of the DPA has been accepted by the data controller, data affected by the notice would become exempt information if there were a subsequent request for access to that data from a person who was not the data subject. Where such data is requested under the terms of the Act it is then subject to a public interest test.
53. In order for section 40(3)(a)(ii) to be engaged the information must first be personal data, which the Commissioner has already accepted. Secondly, the right to object to the processing must be exercised by the data subject, which, having viewed the relevant correspondence,

the Commissioner accepts has happened. Thirdly, the public authority must have accepted the notice under section 10(3) of the DPA stating whether they intend to comply with the notice or not. The Commissioner will consider this element below.

54. Within their submission the party concerned cites sections 10(1)(a) and (b) of the DPA and asks the public authority to cease processing their personal data and to destroy it in line with principle 5 of the DPA, i.e. *"personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes"*.
55. In its response to the party the public authority has advised that it is not able to comply with the section 10 notice for the following reasons.
 - There is no absolute right under s10 of the DPA for a data subject to require the data controller to cease processing personal data or to delete it.
 - The information needs to be kept available for the Commissioner to consider in the event of an appeal.
 - As an information request has been made, deletion of the data at this stage may constitute a criminal offence under section 77 of the Act.
56. As such, it is the Commissioner's view that the public authority has concluded that the section 10 notice is not valid and has advised the party accordingly - although he notes that the public authority did therefore erroneously cite section 40(3)(a)(ii) in its refusal. Consequently, the Commissioner has not considered this particular issue any further,
57. For the reasons given above, and in line with his Previous Decision, the Commissioner concludes that the exemption is not engaged.

Confidential annex

58. Further concerns were also raised by the public authority. These are appended to this Notice in a 'confidential annex' which has not been provided to the complainant. These concerns have not been upheld.

Procedural Requirements

Section 1 – general right of access **Section 10 – time for compliance**

59. Section 10(1) provides that:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

60. Section 1(1) provides that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

61. The Commissioner finds that the public authority breached section 10(1) by failing to inform the complainant whether or not it held the requested information within 20 working days of the request.

Section 17(1) - Refusal of request

62. Section 17(1) of the Act provides that:

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies."

63. In failing to provide a valid refusal notice within the statutory time limit, the public authority breached section 17(1).

The Decision

64. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.

- In failing to inform the complainant whether or not it held the requested information within 20 working days of the request it breached section 10(1).
- In failing to provide a valid refusal notice within the statutory time limit, the public authority breached section 17(1).
- It incorrectly cited section 40(2).

- In failing to provide the requested information to the complainant it further breached sections 10(1) and 1(1)(b).

Steps required

65. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- it should disclose the requested information.
66. The public authority must take the steps required by this Notice within 35 calendar days of the date of this notice.

Failure to comply

67. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

68. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.

Internal review

69. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
70. Whilst the Commissioner does consider this case to be 'exceptional' and he notes that the public authority was subjected to delays whilst contacting the affected parties, he is still concerned that it took over 40 working days for an internal review to be completed.

Right of Appeal

71. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk.

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is sent.

Signed

Gerrard Tracey
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Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal annex

Freedom of information Act 2000

Section 40 – personal information

- (2) Any information to which a request for information relates is also exempt information if-
- (a) it constitutes personal data which do not fall within subsection (1), and
 - (b) either the first or the second condition below is satisfied."
- (3) The first condition is-
- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
 - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

Data Protection Act 1998

The data protection principles

- 1 Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless
 - (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.
- 2 Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
- 3 Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
- 4 Personal data shall be accurate and, where necessary, kept up to date.
- 5 Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
- 6 Personal data shall be processed in accordance with the rights of data subjects under this Act.

- 7 Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- 8 Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

Section 1(1) provides that –

‘personal data’ means data which relate to a living individual who can be identified-

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

Section 10 provides that -

- (1) Subject to subsection (2), an individual is entitled at any time by notice in writing to a data controller to require the data controller at the end of such period as is reasonable in the circumstances to cease, or not to begin, processing, or processing for a specified purpose or in a specified manner, any personal data in respect of which he is the data subject, on the ground that, for specified reasons—
 - (a) the processing of those data or their processing for that purpose or in that manner is causing or is likely to cause substantial damage or substantial distress to him or to another, and
 - (b) that damage or distress is or would be unwarranted.
- (2) Subsection (1) does not apply—
 - (a) in a case where any of the conditions in paragraphs 1 to 4 of Schedule 2 is met, or
 - (b) in such other cases as may be prescribed by the [F1 Secretary of State] by order.
- (3) The data controller must within twenty-one days of receiving a notice under subsection (1) (“the data subject notice”) give the individual who gave it a written notice—
 - (a) stating that he has complied or intends to comply with the data subject notice, or
 - (b) stating his reasons for regarding the data subject notice as to any extent unjustified and the extent (if any) to which he has complied or intends to comply with it.
- (4) If a court is satisfied, on the application of any person who has given a notice under subsection (1) which appears to the court to be justified (or to be justified to any extent), that the data controller in question has failed to comply with the notice, the court may order him to take such

steps for complying with the notice (or for complying with it to that extent) as the court thinks fit.

- (5) The failure by a data subject to exercise the right conferred by subsection (1) or section 11(1) does not affect any other right conferred on him by this Part.